

**ILLINOIS STATE BOARD OF EDUCATION  
IMPARTIAL DUE PROCESS HEARING**

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STUDENT<sup>1</sup>,

Student,

Case No: 2024-DP-0228

v.

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

■■■■ HSD ■■■■,

School District.

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**FINAL DETERMINATION AND ORDER**

**JURISDICTION**

The undersigned has jurisdiction over this matter pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §1400 *et seq.* and the Illinois School Code, 105 ILCS 5/14-8.02a *et seq.*

**BACKGROUND**

The Student is a 15-year-old, male who is a rising 10<sup>th</sup> grade student at a private therapeutic day school. He qualifies for special education services under the disability category of Emotional Disability. He is diagnosed with Anxiety, Intermittent Explosive Disorder, and Attention Deficit Hyperactivity Disorder (ADHD). The Student has difficulty with self-advocacy and staying awake in the classroom. He exhibits defiance and work refusal when presented with non-preferred tasks.

Parent maintains that the District violated the mandates of the IDEA and the Illinois School Code by notifying Parent that the site for implementation of the Student's placement for the 2024-

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<sup>1</sup> Personal identification information is provided in Appendix A.

2025 school year would be changed and requesting Parent's attendance at an IEP meeting to discuss same. (IHO Exhibit #1-2, 4-5.)

Parent, *pro se*, filed a due process hearing request on May 28, 2024. (IHO Exhibit #1.) The District filed its response to the due process hearing request on June 7, 2024. (IHO Exhibit #4.) Parent filed additional information related to the due process hearing request on June 8, 2024. (IHO Exhibit # 5.) The parties participated in resolution session on June 24, 2024, however, they were unable to resolve the outstanding issue in this matter. (IHO Exhibit #7-8, 10.) The Prehearing Conference was commenced and completed on July 16, 2024. (IHO Exhibit #11-13, 15.)

The original 45-day timeline expired on August 11, 2024. On July 31, 2024, the parties jointly requested an extension of same in order to convene the due process hearing on a date mutually convenient to both parties, counsel and witnesses. The joint motion for continuance was granted for good cause shown and the 45-day decision due date was reset to August 20, 2024. (IHO Exhibit # 24-25.) Due Process Hearing date was set by agreement for August 6, 2024. (IHO Exhibit #15, 23-25.)

The Parent opted for a closed hearing. The Due Process Hearing was held on August 6, 2024, via Zoom video conference. Parent was self-represented. Ms. Laura Knittle and Ms. Taylor Hixon of Gordon Rees Scully Mansukhani, LLP represented the District. The Parent presented four individual witness. District presented three individual witnesses.<sup>2</sup> Parent presented the following Parent Exhibits<sup>3</sup>: SPED credentials and Dr. B Resume which were admitted into

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<sup>2</sup> Witnesses presented by both parties are identified in Appendix A.

<sup>3</sup> Parent tendered multiple documents at the time of the 5-day disclosures. However, same were not tendered in compliance with this Hearing Officer's directives in her Prehearing Report & Order – i.e. labeled as exhibits, paginated. This was after discussion regarding same at both the Prehearing Conference and several status conferences to ensure that both parties understood the requirements for the exhibit books. This IHO offered to provide Parent until the end of the day on the 5-day disclosure date to submit her exhibits in compliance with the Prehearing Report & Order. However, Parent indicated that she only needed two documents which was already part of the IHO Exhibits (See IHO Exhibit # 5.)

evidence. The School District presented the following District Exhibits (SD) #1-4, 6-13, and pages 113-118<sup>4</sup> which were admitted into evidence. The parties presented one Joint Exhibit (JE) # 1 which was admitted into evidence. The Hearing Officer's Exhibits were: IHO Exhibits # 1-27. Both parties submitted oral closing statements and a written outline thereof. The District provided citations to any case law relied upon. At the Prehearing Conference and on the record at hearing, the parties stipulated that they are in agreement with the contents of the Student's April 25, 2024, IEP other than the site for implementation of the Student's placement. (IHO Exhibit #15.)

### ISSUE

The issue raised by the Parent, including the relief requested, and the response of the District, present the following issues, defenses and requested relief for determination by this Hearing Officer:

(a) Whether FS, a private therapeutic day school, is an appropriate site for implementation of the Student's placement pursuant to his IEP dated April 25, 2024, and thus provides him with a free and appropriate public education (FAPE).

The Parent maintains that FS, a private therapeutic day school, is an appropriate site for implementation of the Student's placement pursuant to pages 33-35 of his April 25, 2024, IEP.

The District maintains that FS is no longer an appropriate site for implementation of the Student's placement pursuant to pages 33-35 of his April 25, 2024, IEP.

The Parent requests the following relief:

- a. Placement of the Student at FS for the duration of the 2024-2025 school year, including extended school year (ESY).

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<sup>4</sup> SD pages #113-118 were submitted by Parent as part of her 5-day disclosure emails. Parent objected to the District's use of same. A discussion was held on the record at hearing and the District was allowed to introduce same after Parent agreed there was no prejudice to her case and she was able to question any witnesses related to these documents.

## **FINDINGS OF FACT**

This Hearing Officer did not have the benefit of a transcript with respect to the testimony heard on August 6, 2024, when writing this decision. Therefore, the following is based upon this Hearing Officer's personal notes and recollection. This Hearing Officer carefully considered the testimony of all witnesses presented and all documents introduced and admitted into evidence whether or not specifically referred to or cited when making her final determination. After considering all the evidence, as well as the arguments of both Parent and District counsel, this Hearing Officer's Findings of Fact are as follows:

1. The Student is a bright, 15-year old male who is entering 10<sup>th</sup> grade in Fall 2024. He has been attending FS, a private therapeutic day school since the beginning of the 2023-2024 school year. He qualifies for special education services under the disability category of Emotional Disability (ED) pursuant to his April 25, 2024, Individualized Education Program (IEP). He has been diagnosed with Anxiety, Attention Deficit Hyperactivity Disorder (ADHD), and Intermittent Explosive Disorder. (Testimony of Parent, AN<sup>5</sup>; JE # 1.)
2. The Student has strengths in English Language Arts (ELA) and enjoys reading. (Testimony of Student, SPED<sup>6</sup>; JE #1.)
3. The Student has deficits in math, self-motivation, and self-advocacy. He exhibits defiant behavior when presented with non-preferred tasks which includes completing academic work. (Testimony of Parent, Student, SPED, AN; JE #1.)

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<sup>5</sup> AN is the Special Education District Coordinator. She has been so employed for the past eleven (11) years. She was previously a special education teacher for eight (8) years in two other school districts. She is the LEA representative at District IEP meetings. (Testimony of AN.)

<sup>6</sup> SPED is a founder, co-owner and special education teacher at FS. He is a licensed professional educator in Illinois with twenty-eight (28) endorsements including special education director certification, social emotional disorders, supervisory endorsements, and principal certification. (Testimony of SPED; SPED credentials.)

4. The Student is currently functioning at a 10<sup>th</sup> grade level in English Language Arts (ELA) and has been functioning at that level since August 18, 2023. (Testimony of Student, SPED; JE #1.)
5. The Student did not make any academic progress in ELA during the 2023-2024 school year. (Testimony of Parent, SPED; JE #1.)
6. The Student is functioning at approximately a 7<sup>th</sup> grade level in mathematics. He completed minimal academic work related to mathematics during the 2023-2024 school year and made no progress in mathematics during that school year. His IEP provided for enrollment in Algebra. However, he did not complete any academic work related to Algebra and same was above his level of functioning in mathematics. (Testimony of Parent, Student, SPED; JE #1.)
7. The Student did not meet the first quarter benchmarks for the goals established by this April 25, 2024, IEP. (Testimony of AN, Parent; JE #1.)
8. Parent conceded on the record at hearing that the Student made no academic progress and minimal progress related to self-advocacy and school refusal during the 2023-2024 school year. (Testimony of Parent.)
9. Student's goal was to earn five (5) credits toward graduation during the 2023-2024 school year. He earned 2.5 credits during that school year. (Testimony of SPED, AN; JE #1.)
10. FS did not reach out to the District to convene an IEP meeting to address the Student's lack of progress during the 2023-2024 school year. (Testimony of AN, DSPED.)
11. The Student's Behavior Intervention Plan (BIP), contained within his April 25, 2024, IEP contains a Crisis Plan and provides that school staff be trained in de-escalation techniques and Crisis Prevention Institute (CPI) intervention techniques. (Testimony of AN; JE #1.)

12. None of the staff at FS were trained in de-escalation techniques or CPI intervention techniques during the 2023-2024 school year. FS did not report this to the District. (Testimony of AN, DSPED<sup>7</sup>; SD #1.)

13. Academic demands are not placed on the Student at FS. Staff encourage him to complete work. SPED did not collect data with respect to Student's time on task or completion of academic work. (Testimony of Student, SPED; JE #1.)

14. The Student prefers to learn via one to one direct instruction. FS uses workbooks and an online platform, [REDACTED]. FS does not subscribe to the portion of Edgenuity that provides direct instruction to students. No evidence was presented that FS provided any direct instruction to the Student and no data was presented to illustrate the Student's progress related to same. (Testimony of SPED, AN, Student; JE #1.)

15. The Student did not use or log on to [REDACTED] during the 2023-2024 school year. (Testimony of AN, SPED, Student.)

16. The Student requires a therapeutic day school setting to meet his behavioral and academic needs. (Stipulation on the record of all parties; Testimony of Parent, Student, SPED, AN, DSPED; JE #1.)

17. There are eight (8) to ten (10) alternate therapeutic day schools which can meet the Student's needs and which provide a small environment, small class size, high staff to student ratio, and employ teachers and paraprofessionals trained, experienced, and licensed to address the Student's behavioral and academic needs. These potential alternative therapeutic day school sites can implement the Student's IEP. About half of the potential schools currently have openings.

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<sup>7</sup> DSPED is the District Director for Special Education. She has been so employed for the past fourteen (14) years. Her primary role is to ensure compliance with special education throughout the District and to supervise and support coordinators to service students in off-site settings. (Testimony of DSPED.)

Parent was provided with Consent to Exchange/Release of Student Information for three alternate therapeutic day school sites on May 31, 2024, and again during these due process proceedings, however, she has refused to provide the requested consent or to consider or tour those facilities. This was uncontroverted by Parent at hearing. (Testimony of AN, DSPED, Parent; JE #1; SD # 3-4.)

18. The District notified Parent on April 30, 2024, of its intension to place the Student at an alternate therapeutic day school site for the 2024-2025 school year. This decision resulted from a lack of Student progress, and safety concerns raised as part of on-going investigations of FS by the Illinois Department of Children and Family Services (DCFS) and the Illinois State Board of Education (ISBE). (Testimony of Parent, AN, DSPED; SD #6-11.)

19. Thereafter, the District made continued attempts to convene an IEP meeting to discuss this decision with Parent and to explore alternate sites for placement of the Student. (Testimony of AN, DSPED; SD #1-4, 6-11.)

20. District attempted to convene an IEP meeting including Parent on May 31, 2024, and provided Parent with timely notice of same. However, Parent declined to participate and cancelled her participation in the meeting on that date. (Testimony of Parent; AN; SD #6-8.)

### **CONCLUSIONS OF LAW**

Based upon the above Findings of Fact, the arguments of Parent and District counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

#### **Free Appropriate Public Education (FAPE)**

The Individuals with Disabilities Education Act ("IDEA") guarantees children with disabilities the right to a free, appropriate, public education ("FAPE"). 20 U.S.C. §1412(a)(1). In

order to determine whether a school district has provided a FAPE requires the determination of whether the school district complied with the procedural and substantive requirements of IDEA. *Board of Education of the Hendrick Hudson Central School District, Westchester County et. al. v. Rowley*, 458 U.S. 176, 206, 102 S.Ct. 3034 (1982). In matters alleging a procedural violation, the hearing officer may find that a student did not receive a FAPE only if the procedural inadequacy impeded the student’s right to a FAPE, significantly impeded the parent’s opportunity to participate in the decisions-making process regarding the provision of a FAPE to the parent’s child or caused a deprivation of educational benefit. 20 U.S.C. §1415(f)(3)(E); 34 C.F.R. §300.513(a); *Rowley* at 206-207. In the instant case, Parent’s due process complaint notice does not allege any procedural violations of the IDEA.

As recently clarified by the United States Supreme Court, under the Individuals with Disabilities Education Improvement Act (“IDEA”), a school satisfies its substantive obligation to provide a free appropriate public education by offering a child “an IEP reasonably calculated to enable a child to make progress in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist.*, No. 15-827, 137 S.Ct. 988 (U.S. Mar. 22, 2017.) “[A]n IEP is reasonably calculated to confer educational benefit when it is ‘likely to produce progress, not regression or trivial educational advancement.’” *Alex R. ex rel. Beth R. v. Forrestville Valley Cmty. Unit Sch. Dist. No. 221*, 375 F.3d 603, 615 (7<sup>th</sup> Cir. 2004.) [T]he progress contemplated by the IEP must be appropriate in light of the child’s circumstances. . . The instruction offered must be ‘specially designed’ to meet a child’s ‘unique needs’ through an *individualized* education program.” *Endrew F.*, 137 S.Ct. 988. The IEP is to provide a statement of the “special education and related services and supplementary aids and services . . . to be provided to the child.” 34 C.F.R. 300.320(a)(4).

The IEP is the “centerpiece” of the IDEA. The IEP is constructed only after careful consideration of the child’s present levels of performance of achievement, disability, and potential for growth. For a child not integrated in the regular education classroom, a child’s IEP may not need to aim for grade level advancement if that is not a reasonable prospect for the child. *Andrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). The child’s program, however, “must be appropriately ambitious in light of the circumstances, just as advancement from grade to grade is appropriately ambitious for most children in the regular classroom.” *Id.* The goals can differ; however, the goals should provide the child with the chance to “meet challenging objectives.” The IEP must also aim to enable the child to make progress. The Supreme Court explained that an IEP which provides for merely more than *de minimis* progress from year to year “can hardly be said to have offered an education at all.” *Andrew F. v. Douglas County Sch. Dis. Re-1*, 375 S. Ct. 988, 69 IDELR 174 (US 2017). Any review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal. *Id.*, at 206–207, 102 S.Ct. 3034.

The IDEA does not require states to develop IEPs that “maximize the potential of handicapped children.” *Board of Educ. v. Rowley*, 458 U.S. at 189, 102 S.Ct. at 3042. What the statute guarantees is an “appropriate” education, “not one that provides everything that might be thought desirable by loving parents.” *Tucker v. Bay Shore Union Free Sch. Dist.*, 873 F.2d at 567 (*internal citation omitted*); see *Carlisle Area School v. Scott P.*, 62 F.3d at 533–34 (school districts “need not provide the optimal level of services, or even a level that would confer additional benefits, since the IEP required by IDEA represents only a ‘basic floor of opportunity’” (*quoting Board of Education v. Rowley*, 458 U.S. at 201, 102 S.Ct. at 3048)).

A school district is not required to provide a student with the “best conceivable” individualized education program, but only an IEP that is reasonably calculated to enable the student to receive educational benefits. *Alex R. v. Forrestville Valley Community Unit School District #221*, 375 F.3d 603,616 (7th Cir. 2004), *cert. denied*, 125 S.Ct. 628 (2004). Local school districts are not required to be guarantors of educational progress but are required to develop IEPs that are reasonably calculated to allow for progress. When determining whether a student has benefited from an educational program, the courts look, at least in part, to whether the student is making progress toward the goals included in the student’s IEP. *County of San Diego v. California Special Education Hearing Office*, 93 F.3d 1458(9th Cir. 1996). *See also Brad K. v. Board of Education of City of Chicago, Chicago Public School District #299*, 787 F.Supp.2d 734, 738 (N.D. Ill. 2011), quoting *Jaccari J. v. Board of Education of City of Chicago, District No. 299*, 690 F.Supp.2d 687, 702 (N.D. Ill. 2010) (factors to consider when determining whether an IEP is reasonably calculated to provide educational benefits “include: ‘(1) the child’s potential; (2) whether his IEPs were tailored to his unique needs; (3) whether his IEPs provided access to specialized services; (4) whether they addressed disability-related acts; and (5) whether the child achieved progress during the relevant time period’”). Goals, short-term objectives, and descriptions of present levels of the student’s performance should reflect the student’s progress, or, if there is a lack of progress, the school district should consider adjusting the program to provide a different configuration or amount of services or a different placement to make it more likely that the IEP will confer educational benefit. *See Kevin T. v. Elmhurst Community School Dist. No. 205*, No. 01 C 0005, 2002 WL 433061 (N.D. Ill. Mar. 20, 2002).

The Seventh Circuit has ruled that under the *Rowley* standard, an “IEP passes muster provided that it is . . . ‘likely to produce progress, not regression or trivial educational

advancement.”” *Alex R.*, *supra*, 375 F.3d at 615, quoting *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245,248 (5th Cir. 1997). *See also Richard Paul E. v. Plainfield Community Consolidated School District 202*, No. 07 C 6911, 2009 WL 995459 at \*17 (N.D. Ill. Apr. 9, 2009) (finding school district did not violate child’s rights under IDEA when IEP was reasonably calculated to provide him with educational benefits by addressing his behavioral and learning disabilities). Indeed, the Seventh Circuit has opined that the “critical issue [is] whether the school administrators were unreasonable” when making placement and service determinations. *School District of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7th Cir. 2002) (finding that one-month delay in figuring out what to do with student after he had to be removed from school was reasonable).

Under the IDEA, the School District has an obligation to educate the student to the greatest extent appropriate with his nondisabled peers. 20 U.S.C.A. §1412(a)(5)(A); *Board of Education of Township District No. 211 v. Ross*, 486 F.3d 267, 277 (7<sup>th</sup> Cir. 2007); *Beth B. v. Van Clay*, 282 F.3d 493 (7<sup>th</sup> Cir. 2002.) The Illinois School Code and implementing regulations also require that to the maximum extent appropriate a child with a disability must be educated in the least restrictive environment with children who are not disabled. 105 ILCS 5/10-22.41; Ill. Admin. Code 226.240. Removal from the regular education classroom of a child with a disability should only occur when education in the regular education classroom cannot be achieved with the use of supplementary aides and services. 20 U.S.C.A. §1412 (a)(5)(A); 34 C.F.R. §300.114 (a)(2)(ii). The Seventh Circuit has declined to adopt any sort of multi-factor test for assessing whether a child must remain in a regular school. *Ross supra*. *See also Beth B., supra*. “The ultimate question is whether the education in the conventional school was satisfactory, and, if not, whether reasonable measures would have made it so.” *Id*. The District may change a student’s placement to a more

restrictive setting or maintain that placement if the student would not make adequate progress in the less restrictive placement. *Ross citing Beth B. v. Van Clay*, 282 F.3d 493, 499 (7<sup>th</sup> Cir. 2002.) Courts have consistently held that progress must be more than minimal. *Polk v. Central Susquehanna Intermediate Unit 16*, IDERL 130 (3<sup>rd</sup> Cir. 1988); *See Andrew F.* at 206-207. When a student is unable to benefit by being with nondisabled peers, has not made sufficient social emotional progress and requires a smaller classroom with trained personnel allowing for more rapid interventions, Illinois courts have upheld a school district's recommendation and continued placement in a therapeutic setting. *Hiawatha School District No. 426*, 58 IDELR 269 (Fed. 27, 2012). Further, educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988).

The testimony and documentary evidence presented is clear and uncontroverted, the Student requires a therapeutic day school placement. (FF # 14.) However, it is also clear that the Student failed to make progress while attending FS during the 2023-2024 school year. The Student failed to make progress in ELA during the 2023-2024 school year. SPED, the Student's current classroom teacher since April 2, 2024, allowed the Student to read novels of his choice, but did not follow any specific curriculum with the Student, and did not collect data related to the Student's progress, or lack thereof. While SPED testified that he was familiar with Illinois Learning Standards, he did not know what they were specifically or how they would relate to this Student. (FF # 2-4, 12-13.) Student is performing at approximately a 7<sup>th</sup> grade level in mathematics and has been since at least the beginning of the 2023-2024 school year. His engagement in mathematics work and instruction was minimal and he made no academic progress in that area during the 2023-2024 school year. (FF # 6-8.) Parent and SPED conceded on the record at hearing

that Student made no academic progress during the 2023-2024 school year. (FF # 4-9.) Further, FS staff did not reach out to the District to convene an IEP meeting during the school year to address the Student's lack of progress. (FF # 10.)

While the Student stated that he enjoys attending FS, it is clear that the academic demands placed on him are minimal at best. While Parent pointed to the Student's recent interest in attending school and desire to improve his performance as reasons to maintain FS as the location for delivery of services, the hearing record reflects only minimal progress related to self-advocacy and school refusal during the 2023-2024 school year. (FF # 8.) The Student was eligible for Extended School Year (ESY) during the summer of 2024, however, he attended only a few days of same. While his goal for 2023-2024 was to earn five (5) credits toward high school graduation, he earned only half of those credits. He was not meeting his first quarter IEP goal benchmarks contained within his April 25, 2024, IEP. (FF # 7-9, 12-13.) The Student prefers to learn via direct one to one instruction. However, no evidence was presented to show that FS is providing any direct instruction to the Student. (FF # 14-15.) Further, the Student's Behavior Intervention Plan (BIP) contained within his IEP contains a Crisis Plan and provides that school staff be trained in de-escalation techniques and Crisis Prevention Institute (CPI) intervention techniques, however, none of the staff at FS were trained in de-escalation techniques and CPI intervention techniques during the 2023-2024 school year. (FF # 11-12.)

The Supreme Court in *Andrew F.* explained that merely more than *de minimus* progress from year to year "can hardly be said to have offered an education at all." *Andrew F.* at 206-207. The parties agree, and the testimony and documentary evidence presented support the finding, that the Student made minimal progress on academic tasks, self-advocacy, and school refusal during the 2023-2024 school year. The Student requires placement in a therapeutic day school in order

to receive a FAPE, however, FS is not an appropriate location for delivery of the Student's special education instruction and related services.<sup>8</sup>

### **Site for Implementation of the Placement**

Courts addressing the question have overwhelmingly determined that a change in location of services, on its own, is not a fundamental change in the educational program and therefore, not a change in education placement under the IDEA. *See, e.g., T.Y. v. New York City Dept. of Educ.*, [584 F.3d 412](#), 419-20 (2d Cir. 2009); *A.W. ex rel. Wilson v. Fairfax Cnty. Sch. Bd.*, [372 F.3d 674](#), 682 (4th Cir. 2004); *White v. Ascension Parish Bd.*, [343 F.3d 373](#), 379 (5th Cir. 2003); *D.K.*, 983 F. Supp. 2d at 145 (D.D.C. 2013); *James v. District of Columbia*, [949 F. Supp. 2d 134](#), 137-38 (D.D.C. 2013); *Johnson v. District of Columbia*, [839 F. Supp. 2d 173](#), 178 (D.D.C. 2012); *Laster v. District of Columbia*, [394 F. Supp. 2d 60](#), 64-65 (D.D.C. 2005); *Spilsbury v. District of Columbia*, [307 F. Supp. 2d 22](#), 26-27 (D.D.C. 2004).

The Student's April 25, 2024, IEP provides for implementation in a private therapeutic day school, and both parties agree that the Student requires such a placement. (FF # 16.) After notifying Parent of its intent to change the location of delivery of services to the Student for the 2024-2025 school year, the District made multiple attempts to engage in discussion with Parent and hold an IEP meeting to discuss and plan for such a change. However, Parent has refused to engage in these discussions. (FF # 18-20.) The District identified eight (8) to ten (10) alternate therapeutic day schools which can meet the Student's needs and which provide a small

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<sup>8</sup> While the District provided credible testimony and documentary evidence related to safety concerns which formed one of the bases of its decision to change the location for delivery of the Student's special education instruction and related services, it is not necessary for this Hearing Officer to decide whether those events actually occurred in order to arrive at the conclusion that FS is not an appropriate site for implementation of the Student's April 25, 2024, IEP. (FF #16.)

environment, small class size, high staff to student ratio, and employ teachers and paraprofessionals trained, experienced, and licensed to address the Student's behavioral and academic needs. These potential alternative therapeutic day school sites can implement the Student's IEP and provide him with direct instruction more appropriate to meet his needs. About half of the potential schools currently have openings. Parent was provided with Consent to Exchange/Release of Student Information for three alternate therapeutic day school sites on May 31, 2024, and again during these due process proceedings, however, she has refused to provide the requested consent or to consider or tour those facilities. This was uncontroverted by Parent at hearing. (FF # 17.)

Educators "have the power to provide handicapped children with an education they consider more appropriate than that proposed by the parents." *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290, 297 (7<sup>th</sup> Cir. 1988). It is within the District's discretion to change the location for delivery of the Student's special education instruction and related services. The District has identified eight to ten alternate locations that can meet the Student's needs and implement his IEP. This is not a change in educational placement pursuant to the IDEA. Further, the District acted reasonably when it notified Parent of its intent to change the location for delivery of the Student's special education and related services for the 2024-2025 school year based upon the Student's lack of progress and credible evidence of safety concerns. *See School District of Wisconsin Dells v. Z.S.*, 295 F.3d 671, 676 (7<sup>th</sup> Cir. 2002).

Based upon the uncontroverted testimony and documentary evidence introduced at hearing, it is the finding of this Hearing Officer that this Student requires a therapeutic day school setting and a change in location for delivery of the Student's academic instruction and related services to one of the alternate sites identified by the District. The District may proceed with

identifying an alternate private therapeutic day school site for the Student for the 2024-2025 school year.

### **CONCLUSION**

Based upon the Findings of Fact and Conclusions of Law, the Student requires an alternate therapeutic day school setting which is able to implement his April 25, 2024, IEP. The District is permitted to move forward with the Student's placement at an alternate therapeutic day school which can provide him with a free and appropriate public education (FAPE).

Parent's requested relief, to maintain the Student in his current therapeutic day school setting of FS, is hereby denied in its entirety.

### **ORDER**

Based upon the above Findings of Fact and Conclusions of Law, it is hereby ordered:

The District is permitted to move forward with placement of the Student in an alternate therapeutic day school setting, which is able to implement the Student's April 25, 2024, IEP.

Parent is hereby ordered to cooperate with same including signing all documents necessary to identify and enroll the Student in an alternate therapeutic day school, touring said facilities, and enrolling the Student in same.

Parent's requested relief to maintain the Student in his current therapeutic day school, FS, is hereby denied.

In accordance with 105 ILCS 5/14-8.02a(h), within **45** calendar days of receipt of this Order, the school district must submit proof of compliance to:

Illinois State Board of Education  
Program Compliance Division  
100 North First Street  
Springfield, IL 62777-0001

**NOTICE OF RIGHT TO REQUEST CLARIFICATION**

Pursuant to 105 ILSC 5/14-8.02a(h) either party may request clarification of this decision by submitting a written request to the Hearing Officer within five (5) days of receipt of the decision. The request for clarification shall specify the portions of the decision for which clarification is sought. A copy of the request shall be mailed to all other parties and the Illinois State Board of Education, Program Compliance Division, 100 North First Street, Springfield, IL 62777. The right to request clarification does not permit a party to request reconsideration of the decision itself and the Hearing Officer is not authorized to entertain a request for reconsideration.

**NOTICE OF RIGHT TO APPEAL**

This is the final administrative decision in this matter. Pursuant to 105 ILCS 5/14-8.02a(i), any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within one hundred and twenty (120) days from the date the decision is mailed to the party.

Dated: August 13, 2024

[Redacted signature block]

/s/ Janet K. Maxwell-Wickett

Janet K. Maxwell-Wickett,  
Impartial Hearing Officer

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